Supreme Court, U.S.
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No. 95-236

In The

Supreme Court of the United States

October Term, 1995

ROBERT HILL,

Petitioner,

vs.

CITY OF CHESTER, PENNSYLVANIA: THE CITY COUNCIL OF THE CITY OF CHESTER, ANNETTE BURTON, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS COUNCILWOMAN OF THE CITY OF CHESTER; AND CHARLES MCLAUGHLIN, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS COUNCILMAN OF THE CITY OF CHESTER,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Are the Equal Protection Rights of an individual abridged where the individual is terminated from an appointed at-will government employment position of administrative assistant to the Mayor due to adverse publicity, protests and questioning of the judgment of government leaders, following disclosure of the facts and circumstances surrounding the individuals prior criminal convictions for murder and rape, all of which were perceived by government decision makers as hampering the effective operation of government.

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I

COUNTERSTATEMENT OF THE CASE

Defendants ("Respondents" herein) Annette Burton and Charles McLaughlin ran for City Council as Democrats together with present Chester Mayor, Barbara Bohannon-Sheppard during the 1991 City wide election. The Burton, McLaughlin and Bohannon-Sheppard ticket was ultimately successful and for the first time in the City of Chester, Democrats held a majority of seats on the Chester City Council. The Plaintiff ("Respondent" herein), Robert Hill, met Bohannon-Sheppard one to two years prior to her run for office either through Hill's wife or through the Mayor's husband who ran an auto repair shop. (App. at 25a-26a). Hill, who was employed at the time by a Philadelphia law firm as a legal secretary, did not work on the Mayor's campaign, did not attend any campaign functions, nor had he ever been involved in politics before the Mayor's election. (App. at 20a, 27a, 28a). The full extent of Hill's involvement in the election of the Mayor was on one or two occasions when he walked with her in his neighborhood as she campaigned for office. (App. at 29a). Hill attended no fund-raising or campaign events and in fact had not voted prior to the 1991 election. (App. at 28a-29a).

Prior to the 1991 election, Bohannon-Sheppard indicated to Hill that, if elected, she wished that he serve as her Administrative Assistant. (App. at 31a). When the Mayor made this comment to Hill, she was unaware of Hill's prior convictions for the murder and subsequent rape of local Chester citizens. (App. at 41a). Even when Hill did tell the Mayor of these convictions after she had won election and after she, as the Mayor, had already publicly agreed to place Hill in the position of Administrative Assistant, he did not give her any details of the crimes he had committed. (App. at 43a). Further, despite attending transition meetings and general governmental organizational meetings with other council members including Defendants, Burton and McLaughlin, Hill never told the Defendants of his criminal record or the underlying

facts until after articles and editorials began appearing in the local newspapers.[1] (App. at 53a-54a). Hill was aware from the outset that, if he intended to serve in the position of Administrative Assistant to the Mayor, there would be public outcry and protest, his name and the facts surrounding criminal background would be exposed in the press and there would be political opposition to his appointment. (App. at 45a-46a).

Shortly after Hill's appointment became public, ministers of various religious faiths in the City of Chester, the families of Hill's victims and other individuals organized protests of Hill's appointment and as Hill admits, had the effect of "bringing pressure to bear on the members of the City Council to terminate his employment." (App. at 327a, ¶ 19). In addition to the protests of church leaders, editorials and articles seriously questioning the propriety of Hill's appointment appeared in the local papers which served the City.[2] These editorials and articles focused,

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1. The following account appeared in the February 6, 1992 *Delaware County Daily Times*: "Hill was fourteen when he committed the murder. He pleaded guilty and served ten years of a 10 to 20 year term in prison. Hill hit Izzo on the head with a large ball peen hammer then stabbed him 18 times with a butcher knife and stuffed the body in his bedroom closet, where it remained for six days before Hill's father made the gruesome discovery." (App. at 43a).

2. On January 24, 1992, an editorial appearing in the *Delaware County Daily Times* addressed the Hill appointment as follows:

> How does a freshman chief executive soft peddle the appointment of a convicted killer and rapist to a key position in her fledgling administration?
>
> She doesn't.
>
> She broadcast it. Loudly. Proudly.
>
> * * *

(Cont'd)

inter alia, upon the grisly and heinous nature of the Plaintiff's crimes.[3]

The entire text of January 24, 1992 editorial was attached to Defendants' Motion for Summary Judgment as Exhibit "F" in the Trial Court.

(Cont'd)

Come on Mayor!

The last thing Chester needs is another stupid, time-consuming, image-tainting scandal.

* * *

In our view, it is the height of hypocrisy to appoint Hill to an important government position, characterizing him as a shining example of the rehabilitated man, while families continue to grieve over his misdeeds.

Make no mistake, Mr. Hill didn't have his act put together 28 years ago when — at the age of 14 — he used first a hammer and then a knife to brutalize and murder insurance agent Patrick Izzo, and then after killing him, to stuff his corpse in a bedroom closet where he would use it for the better part of a week like some grisly and macabre automated teller.

* * *

3. On February 5, 1992, a column in the *Delaware County Daily Times* read as follows:

Hill has admitted the killing of Izzo, but has maintained his innocence on the rape charge, claiming it was a consensual act. Hills' version of the sexual encounter

(Cont'd)

The official reaction of the Respondents and other members of the new administration was to stand behind Hill with the expectation that press coverage would eventually end. (App. at 55a-56a). Councilman McLaughlin went so far as to meet with Hill to prepare for a meeting with one of the most vocal protesters of Hill's appointment as Administrative Assistant to the Mayor, Reverend Strand. (App. at 61a).

The official minutes of several Council Meetings of the City of Chester similarly reflect public outcry regarding the appointment of Hill as the Mayor's Administrative Assistant. (App. at 313a). The overwhelming negative outcry and publicity regarding Hill's appointment and the corresponding negative effect on the efficient functioning of City Government reached its nadir at the public Council Meeting on March 26, 1992 attended by all three Philadelphia TV news programs and the nationally syndicated show "A Current Affair". (*See* Memorandum Opinion below at A-78, fn 13).

At this meeting, Councilwoman Annette Burton presented a Motion before City Council to remove Hill from the City's payroll. The Motion was seconded by Councilman Charles McLaughlin, but was withdrawn upon the advice of the Solicitor of the City of Chester "that the Administrative Assistant to the Mayor served only at the pleasure of the Mayor." (App. at 315a). The minutes of the Council Meeting reflect the reasons given by Councilwoman Burton for the actions she initiated that day:

> Councilwoman Burton made a statement which she said took hours of thought and

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(Cont'd)

> doesn't jibe with police and witness accounts of the crime. According to those accounts, Hill's victim was screaming for help and Hill had to be beaten with night sticks to get him off her.

> prayer. Some of you that know me will understand, others, I pray that you do understand. Today I find myself at a crossroad with the people of this City. This City that I call home, elected me, and entrusting (sic) me to do what I think is in the best interest of them. One of the things that I promised during the campaign was if I felt something was wrong, I would stand up and say what was wrong. Over the past few months there has been one issue that has been allowed to linger much to long. In order for us to sell the City of Chester to outside business and industry, we must not allow a single issue to cloud the decisions that are made to stop us from becoming the great city that I know we can be. Robert Hill has become a single issue. I strongly support rehabilitation and employment to ex-offenders, but that does not mean that one is entitled to any position that they want. I will support Robert Hill becoming employed, but, not put in the position of Assistant to the Mayor. My position on this matter was not one that was easy for me to come to, but, I was elected to do what I feel is best for my City and I can know (sic) longer justify keeping Mr. Hill in his present position. So, I make a motion to [remove] Robert Hill from the payroll from the City of Chester. (App. at 315a).

Subsequently, Councilwoman Burton moved, instead, to set Hill's salary at zero, thereby effectively eliminating Hill's continued employment with the City. This motion was seconded by Councilman McLaughlin and City Council voted 2 to 1 in favor of eliminating Hill's salary.

Hill admitted that other than the act of voting to set his salary at zero, he had no proof that the Appellee's acted with any malice towards him, that he is still on speaking terms with Defendant Burton and that neither Defendant Burton nor McLaughlin held any personal animosity toward him. (App. at 70a, 88a-90a). Hill's chief complaint concerning the Councilpersons' conduct was that they did not personally tell him that they were going to vote to set his salary at zero prior to taking their action. (App. at 71a).

Since Hill was under Pennsylvania law an employee at will, he could be discharged for any reason or no reason at all. As the Trial Court found, Hill had no property interest in this employment. (*See* Memorandum Opinion at A-68-70).

Following this meeting, Hill never requested a hearing regarding the City Council's decision. (App. at 84a-87a). Subsequently, an Ordinance was adopted by a vote of 4 to 1, completely eliminating the position of Administrative Assistant to the Mayor.

REASONS FOR DENYING THE WRIT

The Judgment Order of the Third Circuit Court of Appeals and the Memorandum Opinion of the District Court, both unpublished[4], do not conflict with the decision of any other United States Court of Appeals, do not decide any Federal Question in a way in conflict with the Supreme Court of Pennsylvania, do not depart from the accepted and usual course of judicial proceedings, nor do they depart from the pronouncements of this Honorable Court.

Contrary to the Petitioners framing of the questions

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4. Unpublished Judgment Orders are of no precdential value. *See* Third Circuit Court of Appeals, IOP's Rule 5.5

presented for review, this case presents no ruling of broad based implication beyond the facts presented to the District Court, upon which summary judgment was entered in favor of the Respondents by the District Court in a well-reasoned decision. Petitioner totally failed to establish *any* factual support for any of the claims brought under federal civil rights statutes. Thus, this Court need not reach the question of whether persons convicted of crimes constitute a "suspect class" for equal protection purposes, nor whether "conspiracies" motivated by other than "racial bias" may be actionable under 42 U.S.C. §§ 1985(3) and 1986, as the proven facts of this case simply don't establish such claims.

The simple and limiting facts of this case are that Robert Hill, a person convicted of murdering a local businessman and raping a local minor was, several years later, an at-will employee of the City of Chester in a position of some public prominence. As an employee at-will he could be terminated for any reason or no reason at all, and had no continuing expectation of employment. For that reason the trial court found that Hill had no protected liberty or property interest, and those rulings are not challenged herein.

The conduct of the Respondents claimed to be a violation of the Petitioner's equal protection rights was the act of effectuating Hill's dismissal from City Government when it became apparent that the public disclosure of the facts and circumstances surrounding his criminal conduct, for which he had been convicted was having an adverse impact on the effective operation of city government. The decision to effectively terminate Hill's employment by setting his salary at zero was an individual decision based upon the facts of Hill's particular case. Those facts included not merely that he was an ex-convict, but that he had committed a rather heinous murder within the City as well as a rape after being released from prison following the

original murder conviction. This decision was also based upon public protests, editorials and demonstrations, calling into question the quality of the leadership of the City Government and hampering local government's operation and business dealings with other agencies. The evidence presented to the lower court included Hill's admission that the individual counselperson Respondents, Annette Burton and Charles McLaughlin, had first supported Hill's continuing employment in the position of Administrative Assistant even after discovering his criminal convictions, and a statement made by counselwoman Burton that she was in favor of Hill's continuing in an employment position other than Administrative Assistant to the Mayor.

The trial court found that City Council acted within its right under the Chester Home Rule Charter to reduce Plaintiff's salary (Memorandum Opinion at A-70) and that the Respondents "had a legitimate purpose of promoting high standards of professional conduct in the position of Administration Assistant to the Mayor . . . [and that] public protests to the appointment of Hill and the Council's concern regarding the protests' effect on the functioning of Chester city government motivated the Council's action." (Memorandum Opinion at A-77-78). Simply put the Trial Court found "specific reasons were set forth supporting the decision to dismiss this specific employee from a specific paid position." (Memorandum Opinion at A-81; citation omitted).

The Petitioner seeks to obtain this Court's review of the entry of Summary Judgment based on these particular facts, by claiming that his mere membership in the class of convicted felons was a substantial or motivating factor in his termination from employment. As the court below observed, however, nothing could be further from the truth. It is not necessary for this Court to reach the issue of whether convicted felons should be deemed a "suspect class" under equal protection analysis. The trial court's opinion addresses in great detail the current status of

equal protection jurisprudence under §§ 1983, 1985(3) and 1986. (Memorandum Opinion at A-72-86).

Where this Honorable Court has denied suspect class status on the basis of age (*Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 49 L. Ed. 2d 520, 96 S. Ct. 2562 (1976)); mental status (*City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 87 L. Ed. 2d 3313, 105 S. Ct. 3249 (1985)); economic or commercial classifications (*BHD of Carpenters and Joiners v. Scott*, 463 U.S. 825, 77 L. Ed. 2d 1049, 103 S. Ct. 3352 (1983)). Women seeking abortion (*Bray v. Alexandria Women's Health Clinic*, __ U.S. __, 122 L. Ed. 2d 34, 113 S. Ct. 753 (1993)); clearly ex-convicts should not be considered a suspect class where their inclusion in this class is due to their own volitional violation of the laws of society. Similarly, the classification of "ex-felons" can include a wide variety of criminal offenses representing not only economic misconduct but including crimes of personal violence which can be the result of pathology representing permanent mental illness or sexual disfunction. For these reasons and many others, no District Circuit Court of the United States has ever suggest that "ex-felons" be given suspect class protection.

The State of Pennsylvania like several other states has enacted a statute specifically permitting the consideration of felony and misdemeanor convictions by prospective employers to the extent that they relate to the applicant's suitability for employment in the position for which they have applied. (18 Pa. C.S.A. § 9125). This Statute can be seen as requiring merely a rational basis upon which to form an employment decision concerning one with a criminal record. Judge Kelly in the instant case, specifically found that the Respondents had a rational basis for their effectuation of the termination of the Petitioner's employment. As this Court stated in *Cleburne*, the decision reached by the government must be "rationally related to a

legitimate government purpose . . . [and may not be] so attenuated as to render the distinction arbitrary or irrational" *Id.* at 473 U.S. 446. Clearly, the District Court was correct in finding that the Respondents' interest in the effective and efficient operation of government and the perception of the responsibility of the local government decision-makers by the business partners and the public the government served were a rational basis for terminating Hill including consideration of the particular circumstances of his criminal convictions. This is particularly true where there has been no showing whatsoever that the Respondents acted with animous toward convicted felons in general, but merely to this particular ex-felon and the effect of his appointment to a particular position on the City Government.

CONCLUSION

For the foregoing reasons the Petition for Certiorari should be denied.

Respectfully submitted,

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